

FILED
LODGED
ENTERED
RECEIVED

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

JUL 12 2000

VICTORIA JEDROWICZ

: AT BALTIMORE
v. : CLERK U.S. DISTRICT COURT
GIANT FOOD, INC. : DISTRICT OF MARYLAND
: BY DEPUTY
: Civil Action WMN-98-3899

MEMORANDUM

On August 3, 1999, this Court granted Defendant Giant Food's Motion to Dismiss Plaintiff's Amended Complaint, thereby closing the action. The Court agreed with Defendant that Plaintiff's claims of Title VII retaliation were either duplicative of those pending in an earlier filed action, WMN-96-3562, or did not constitute an adverse employment action sufficient to invoke the protections of Title VII.

On May 31, 2000, the Fourth Circuit vacated this Court's written opinion in part and remanded the action for further proceedings. The appellate court reasoned that this Court erred in "dismissing as duplicitous part of Jedrowicz's 1998 action." Jedrowicz v. Giant Foods, Inc., No. 99-2219 (4th Cir. May 31, 2000). The Fourth Circuit affirmed this Court's decision dismissing those allegations which failed to state a claim.

In light of the Fourth Circuit's ruling, this Court turns to the arguments which remain in Defendant's motion to dismiss (Paper No. 12). In addition to arguing that Plaintiff's claims were duplicative of those in her earlier lawsuit, Defendant also asserted that Plaintiff's amended complaint must be dismissed

(40
sg)

because the complaint was not served within 120 days of the date it was filed. The Court did not reach this argument in its earlier memorandum and order because it agreed with Defendant's alternative argument that the claims were either duplicitous or failed to state a claim.

Fed. R. Civ. P. 4(m) requires a plaintiff to serve the summons and complaint on the defendant within 120 days after filing of the complaint. In the present case, Plaintiff's complaint was filed in this Court on November 25, 1998. Defendant was not served until March 26, 1999, 121 days after the filing of the complaint.

Although the parties addressed the issue of timely service in their earlier memoranda, the Court will provide them an opportunity to update their arguments, in light of the delay while this case was on appeal. The parties are directed to brief the Rule 4(m) issue within the time frame provided by the separate attached order.



William M. Nickerson
United States District Judge

Dated: July 12, 2000